

**PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR AUGUST 20, 2020 AT 8:30 A.M.**

These are the tentative rulings for the **THURSDAY, AUGUST 20, 2020 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, AUGUST 19, 2020**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: ALL LAW AND MOTION MATTERS WILL PROCEED BY TELEPHONIC APPEARANCES. (PLACER COURT EMERGENCY LOCAL RULE 10.28.)

More information is available at the court's website: www.placer.courts.ca.gov.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB**. If oral argument is requested, it shall be heard via telephonic appearance.

1. M-CV-0075006 HALDEMANCORP BUILDERS v. HUCKABEE, CLIFTON

Cross-Defendant Curt Gomes' Demurrer to the Cross-Complaint

Cross-defendant Curt Gomes' demurrer to the cross-complaint is continued to Thursday, September 3, 2020 at 8:30 a.m. in Department 42. The court file reflects cross-complainant filed an opposition to the demurrer that was rejected by the clerk's office on July 13, 2020. At this time, the court is experiencing a significant strain on judicial resources, which has impacted processing time for civil documents. In light of this, it is unclear whether cross-complainant was informed of the rejection in a timely manner to resubmit his opposition. The matter is continued to afford cross-complainant to opportunity to re-file the opposition. Cross-complainant Clifton Huckabee shall file his opposition by Tuesday, August 25, 2020. If cross-complainant fails to file his opposition, the court will proceed to hear the substance of the demurrer.

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Cross-Defendants Lawrence Skidmore, Aronowitz Skidmore Lyon, and Jason Haldeman's Motion to Quash Service of Summons

Preliminary Matters

As an initial matter, the court declines to order a video appearance for any oral argument requested by the parties.

Ruling on Request for Judicial Notice

Cross-defendants' request for judicial notice is granted under Evidence Code section 452.

Ruling on Motion

The motion is granted in its entirety. In the current request cross-defendants Lawrence Skidmore and Jason Haldeman specially appear to quash the service of summons related to Clifton Huckabee's cross-complaint. It is the cross-complainant who has the burden to prove the facts establishing proper service on the cross-defendants. (*Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 413.)

Turning first to service of the summons on Lawrence Skidmore, the proof of service of summons provides conflicting attestations. The declarant, Rod Quigley, attests that he personally served Mr. Skidmore. However, Mr. Quigley goes on to attest that he actually served an unidentified office manager of Aronowitz Skidmore Lyon. It is also noted Mr. Quigley fails to identify the time of day for service. These conflicts in the proof of service fail to create a presumption that service was proper. (see *Dill v. Berquist Const. Co., Inc.* (1994) 24 Cal.App.4th 1426, 1441-1442; *Floveyor International, Ltd. v. Superior Court (Shick Tube-Veyor Corp.)* (1997) 59 Cal.App.4th 789, 795.) Thusly, cross-complainant cannot rely upon any presumption, rebuttable or otherwise, of proper service. (*Ibid.*) Cross-complainant does not submit sufficient evidence establishing service was proper on Lawrence Skidmore. Further, Mr. Skidmore submits declarations that directly challenge he was properly served. (see generally Skidmore declaration and Melton declaration.) Cross-complainant has failed to meet his burden here and service of the summons on Lawrence Skidmore is properly quashed.

PLACER COUNTY SUPERIOR COURT
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DEPARTMENT 42
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This leaves service of the summons on Jason Haldeman. Again, Mr. Quigley is the declarant who attests Mr. Haldeman was personally served on May 26, 2020 at 8:58 a.m. In this instance, the proof of service appears to be statutorily compliant, which creates a rebuttable presumption that service was proper. (see *Dill v. Berquist Const. Co., Inc.* (1994) 24 Cal.App.4th 1426, 1441-1442; *Floveyor International, Ltd. v. Superior Court (Shick Tube-Veyor Corp.)* (1997) 59 Cal.App.4th 789, 795.) Mr. Haldeman provides a declaration stating he was not personally served and declaring he was not at the office at the time of service. (see generally Haldeman declaration.) He attests to meeting with a client on the morning of May 26, 2020. (Ibid.) Cross-complainant's opposition seems to tacitly concede this point, contradicting the attestations made by Mr. Quigley in the proof of service, by asserting Mr. Haldeman was actually served at his place of business through an office manager. (Opposition, p. 2:20-26.) This is sufficient to rebut proper service, requiring service to be quashed as to Mr. Haldeman as well.

On a final note, the court has read and considered the opposition to the motion filed by cross-complainant Huckabee. While it is unclear from the declarations submitted whether Mr. Huckabee prepared the opposition memorandum personally, or received assistance from someone else, he is responsible for the contents of the opposition. "Pro per litigants are held to the same standards as attorneys." (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.) The fact that a party is self-represented does not give the party freedom to engage in the type of unwarranted ad hominem attacks on the character or motives of an opposing party or counsel that attorneys are prohibited from making. It should be remembered that the sarcastic tone and demeaning comments made by, or on behalf of Mr. Huckabee, in his opposition are being made in a court of law, and not made as unfettered free speech on the internet or on a reality TV show. For examples only, Mr. Huckabee's references to a "little green ninja theory," "intergalactic conspiracy," quoting from Joseph Goebbels, referring to opposing counsel as "stupid or just arrogant," or accusing counsel of making a "delusional declaration," are improper and not at all helpful to the court in considering the legal issues presented. Mr. Huckabee is cautioned not to present this type of argument to the court in the future.

In light of the foregoing, the motion is granted in its entirety. Service of the summons and complaint on cross-defendants Lawrence Skidmore and Jason Haldeman is quashed.

**PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
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TENTATIVE RULINGS FOR AUGUST 20, 2020 AT 8:30 A.M.**

2. S-CV-0036980 SPENCER, SAMUEL v. SINCLAIR, ROBERT

The motion for attorney's fees is continued to Thursday, September 17, 2020 at 8:30 a.m. in the law and motion department to be heard by Commissioner Michael A. Jacques. The court apologizes to the parties for the inconvenience.

3. S-CV-0042080 PACIFIC UNION INT'L v. LUDWICK, ERIK

The two motions for summary judgment/summary adjudication are continued to Thursday, October 22, 2020 at 8:30 a.m. in Department 42. The court is informed that a notice of coordination with a request for stay is currently pending before the Judicial Council. The motions are continued to afford time for the Judicial Council to make a determination on the coordination matter. The parties are requested to file any updates regarding the determination on the coordination motion after the Judicial Council has rendered its decision.

The parties are also informed that the stipulation and order continuing trial dates was entered on August 18, 2020.

4. S-CV-0042306 PATTERSON, NICOLE v. SKY ZONE

Petition for Compromise of Minor's Disputed Claim

The petition to approve compromise of minor's pending claim is granted. After careful consideration of the petition and supporting attachments, the court finds the settlement is in the best interest of the minor. (Probate Code sections 2504, 3500; Code of Civil Procedure section 372; *Pearson v. Superior Court (Nicholson)* (2012) 202 Cal.App.4th 1333, 1337.) If oral argument is requested, the appearance of the minor at the hearing is waived.

5. S-CV-0043816 MY SECURE ADVANTAGE v. U.S. LEGAL SERVICES

Pursuant to the stipulation and order entered on August 17, 2020, the following matters are dropped from the civil law and motion calendar:

- (1) Plaintiff's Motion for Appointment of Discovery Referee;
- (2) Plaintiff's Motion to Compel Further Responses to Request for Production of Documents;
- (3) Defendant's Motion to Compel Further Responses to Request for Production of Documents; and
- (4) Defendant's Motion for Summary Judgment

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6. S-CV-0044082 SOK, SINNA v. GHASSAN AUTOMOTIVE

W. Steven Shumway's Motion to be Relieved as Counsel

W. Steven Shumway's motion to be relieved as counsel is granted. Mr. Shumway shall be relieved as counsel of record for defendant Ghassan Automotive effective upon the filing of the proof of service of the signed order after hearing on defendant.

7. S-CV-0044610 F & T INVESTMENT v. WHITECHAT, PATRICIA

Plaintiff's Motion for Stay Pending Arbitration

Plaintiff's motion to stay proceedings pending arbitration is continued to Thursday, September 10, 2020 at 8:30 a.m. in Department 42. The court is experiencing a significant strain on judicial resources, which has impacted processing time for civil documents. The motion is continued to assure the briefing in this matter is complete as no opposition currently appears in the court file.

8. S-CV-0044622 KOUKOULIS, ALEXIA v. NISSAN NA

Defendant's Demurrer to the Complaint

Ruling on Request for Judicial Notice

Defendant's request for judicial notice is granted under Evidence Code section 452.

Ruling on Demurrer

The demurrer is sustained with leave to amend. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A review of the third cause of action shows plaintiff fails to plead facts with the level of specificity necessary to support the fraud claim. It is also noted that the allegations within the complaint fail to consistently identify the mechanical defects of the vehicle

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
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subject to the litigation. Plaintiff initially alleges she purchased a 2013 Nissan Altima. (Complaint ¶4.) As the allegations continue, however, plaintiff alleges defects in the transmission are related to the Nissan Sentra. (Id. at ¶¶13-21.) These allegations do not sufficiently identify the subject vehicle along with failing to allege specific facts necessary to support fraud. Since the third cause of action is deficiently pleaded, the demurrer is properly sustained.

Plaintiff may file and serve the first amended complaint by September 8, 2020.

Defendant's Motion to Strike Punitive Damages from the Complaint

The motion is denied as moot in light of the court's ruling on the demurrer.

9. S-CV-0044844 DUKA, EUGENE v. BANSAL, VIPIN

Defendant's Motion to Strike Portions of Plaintiff's Complaint

Defendant's motion to strike portions of plaintiff's complaint is granted with leave to amend. In the current request, defendant seeks to strike portions of the complaint that seek exemplary/punitive damages. Civil Code section 3294(a) allows for the recovery of punitive damages in noncontract cases where the defendant is guilty of oppression, fraud, or malice. Here, the complaint fails to sufficiently allege facts that would support punitive damages. Initially, there are insufficient allegations of fraud as the complaint only alleges negligence based upon a motor vehicle collision.

Nor does the complaint sufficiently allege oppressive conduct on the part of defendant. Oppression generally refers to despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard to that person's rights. (Civil Code section 3294(c)(2).) The use of the word "despicable" usually connotes conduct so vile, baseless, contemptible, miserable, wretched, or loathsome that it would be looked down upon by ordinary, decent people. (*Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 331.) The allegations within the complaint are conclusory, failing to allege facts rising to the level of despicable conduct.

Finally, the complaint does not sufficiently allege malicious conduct. Malice refers to despicable conduct by defendant that is willful with the conscious disregard of the rights or safety of others. (Civil Code section 3294(c)(1).) Bad faith or overzealous conduct is not sufficient. (*Tomaselli v. Transamerica Ins.*

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
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TENTATIVE RULINGS FOR AUGUST 20, 2020 AT 8:30 A.M.

Co. (1994) 25 Cal.App.4th 1269, 1288.) Nor is conduct where defendant takes actions to protect or minimize injury sufficient. (*American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th 1017.) To reiterate, the allegations are conclusory and fail to allege facts of willful conduct or conscious disregard on the part of defendant. For these reasons, the motion is granted.

Plaintiff may file and serve his first amended complaint by September 8, 2020.

10. S-CV-0045090 824 TRUEBLUE v. ALLSTATE LIFE INS CO

Second Amended Petition for Approval for Transfer of Structured Settlement Payment Rights

The second amended petition for transfer of structured settlement payments is granted as prayed. In determining whether a proposed transfer should be approved, the court reviews the request to verify that the transfer is fair, reasonable, and in the payee's best interest. (Insurance Code section 10139.5(b).) The totality of the payee's circumstances is viewed in light of the factors articulated in Insurance Code section 10139.5(b)(1) through (15). The court has carefully reviewed the petition, supporting declarations, and related attachments in light of the factors found in Insurance Code section 10139.5(b) and finds (1) that the transfer is in the best interest of the payee; (2) the payee has been provided a written advisement to seek independent professional advice regarding the transfer and has knowingly waived the right to receive such advice; (3) the notification, disclosures, and transfer agreement comply with the requirements of Insurance Code sections 10136, 10138, and 10139.5; (4) the transfer does not contravene applicable law or order of the court; (5) the payee understands the terms of the transfer agreement; and (6) the payee does not wish to cancel the transfer agreement. Based upon the foregoing, the court approves the transfer.

11. S-PR-0010062 IRMO ROBERT F. MILLER LIVING TRUST

The motion to compel compliance with subpoena is dropped from the calendar as no moving papers were filed with the court.